

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Petition of:

Case Number 18-51223

UAW-CHRYSLER SKILL DEVELOPMENT
AND TRAINING PROGRAM,

Honorable Paul D. Borman

In the Matter of:

UNITED STATES OF AMERICA,

Case Number 17-20406

Plaintiff,

v.

D-2 ALPHONS IACOBELLI,

Defendant.

**RESPONSE TO THE UAW-CHRYSLER SKILL DEVELOPMENT
AND TRAINING PROGRAM'S MOTION FOR RECOGNITION
OF CRIME VICTIM STATUS AND FOR RESTITUTION**

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STATEMENT OF ISSUES PRESENTED

Should this Court deny the motion of unindicted coconspirator UAW-Chrysler Skill Development and Training Program for recognition of crime victim status and restitution? **Yes.**

CONTROLLING OR MOST APPROPRIATE LEGAL AUTHORITY

Crime Victims' Rights Act, 18 U.S.C. §3771

Mandatory Crime Victim Rights Act, 18 U.S.C. §3663A

United States v. Sexton, 894 F.3d 787 (6th Cir. 2018)

In re McNulty, 597 F.3d 344 (6th Cir. 2010)

United States v. Reifler, 446 F.3d 65 (2d Cir. 2006)

United States v. Lazarenko, 624 F.3d 1247 (9th Cir. 2010)

United States v. Litos, 847 F.3d 906 (7th Cir. 2017)

In re Bankr. Estate of AGS, Inc., 565 F. App'x 172 (4th Cir. 2014)

United States v. Adorno, 950 F. Supp. 2d 426 (E.D.N.Y. 2013)

United States v. Block, No. 16-CR-595 (JPO), 2018 WL 722854 (S.D.N.Y. Feb. 6, 2018)

INTRODUCTION

The writing is on the wall for unindicted coconspirator UAW-Chrysler Skill Development and Training Program (“NTC”). It sits at the epicenter of a massive conspiracy to corrupt the labor management process, as the conduit of choice for illegal payments between its parents, Fiat Chrysler Automobiles US LLC (“FCA”) and the UAW. It was named as a coconspirator in the opening charging document in the case, and its former controller admitted that he filed false tax returns on its behalf in an effort to conceal these illegal payments. Six former members of its executive leadership board have been charged and pled guilty. Five are awaiting sentence. And the investigation and prosecution are far from over.

The NTC seems to be of the mind that the best defense is a good offense. In June 2018, it filed a civil fraud suit against defendant Alphons Iacobelli and others in Oakland County. On the eve of Iacobelli’s sentencing in this case, it claimed to be a victim of Iacobelli’s crimes and deserving of restitution. This eleventh-hour motion should be denied. The NTC has not shown that it is a victim of Iacobelli’s Taft-Hartley conspiracy with entitlement to restitution, and the appropriate venue for any allegations of fraud, theft or embezzlement is Oakland County Circuit Court, where the civil complaint containing those precise allegations is pending.

AN OVERVIEW OF THE NTC

I. The NTC's Stated Purpose Versus the Corrupt Reality.

During the 1980s, collective bargaining agreements negotiated between the UAW and the Big Three automotive companies created several tax exempt 501(c)(5) organizations designed to provide training for their UAW-represented hourly workforce. FCA's corporate predecessor established the NTC.

The NTC was critical to the operation of the Taft-Hartley conspiracy to buy labor peace, serving as an instrument to conceal illegal payments under the benevolent guise of training workers and ensuring their health and safety. Rather than make the payments directly from FCA accounts, which could have faced scrutiny from the company's auditors, the illegal payments of FCA funds were purposely routed through the unaudited NTC.

The NTC also served a critical role in the aspect of the conspiracy that dealt with the reimbursement of salary and fringe benefits of certain UAW employees, a process known as UAW "chargebacks." In short, the NTC permitted the UAW to park sham employees under the NTC roof so that the UAW could seek reimbursement from FCA. As explained in the United States' sentencing memorandum concerning Iacobelli, in addition to the payments to the various union officials, FCA and Iacobelli directed millions of dollars to the UAW as an entity

when the UAW charged FCA back for the salaries and benefits of UAW officials assigned to the NTC. Although some of these employees were legitimate, high-level UAW officials intentionally assigned additional UAW personnel to the NTC with no intention that these individuals would perform any NTC work. Iacobelli and FCA viewed the chargebacks of the salaries of these bogus NTC workers as a “political gift” to the UAW that enabled the UAW to keep costs down. The NTC’s billeting of these fake employees was critical to this effort.

II. The NTC is Controlled by FCA and the UAW.

The NTC was an attractive instrument in this conspiracy because it was under exclusive FCA and UAW control. The NTC is jointly operated by UAW and FCA management, and governed by a Joint Activities Board (“JAB”) composed of equal numbers of FCA and UAW representatives. UAW Vice President General Holiefield served as co-chairman on the UAW side from 2009 through 2014. Norwood Jewell succeeded Holiefield. Iacobelli served as co-chairman on the FCA side.

(D-1) Jerome Durden was the NTC controller and JAB secretary. Several other individual defendants also served on the JAB. (D-5) Michael Brown and (D-7) Keith Mickens served as NTC co-directors, on behalf of FCA and the UAW, respectively. JAB members (D-4) Virdell King and (D-6) Nancy Adams-Johnson

admitted to prolific spending of FCA funds routed through the NTC on iconic luxury brands, and even a birthday shotgun for another UAW official. All of these defendants have pled guilty. It is not surprising that these leaders decided that the NTC would not be subject to audit or rigorous internal financial controls.

III. FCA Reimbursed the NTC for the Illegal Payments.

Given that the NTC demands restitution, it is important to understand how the NTC is funded - - and more importantly, reimbursed - - by FCA. FCA provides funding for the NTC according to a formula that multiplied the hours worked by UAW-represented FCA employees against a tiered rate for regular and overtime hours. FCA earmarked funds for the NTC tied to this hours-worked formula, and the NTC received disbursements of these FCA funds through an expense-based system. The NTC typically carried a balance in its operating account sufficient to fulfill daily obligations. Periodically, when its operating account balance decreased, the NTC would submit a draw request to FCA. The draw request functioned as a reimbursement: the amount of the request matched the previous period's spending by the NTC. NTC draw requests were prepared by Durden and approved first by Iacobelli, then by FCA's finance personnel, and ultimately, by FCA's CFO. Once approved by the CFO, a transfer of funds was initiated from FCA's general cash account into the NTC's main operating account.

These periodic transfers diminished the pot of funds set aside for the NTC based on the hours-worked formula. Due to the expense-based structure of the funding mechanism, a substantial reserve accrued. For example, if the funding mechanism resulted in a \$50 million annual FCA obligation to the NTC, but the NTC's expenses and subsequent draw reimbursement requests totaled only \$40 million, the NTC had a reserve of \$10 million left.

The NTC was an instrument in this conspiracy through which funds were dispersed. It has not identified any instance where its operating funds were used to make an illegal Taft-Hartley payment, but it was not reimbursed by FCA through a subsequent draw request. In addition, the NTC never came close to hitting the hours-worked allotment in its reserve, and has not identified any instance where it presented a draw request to FCA that was rejected for insufficient funds.

PROCEDURAL POSTURE

I. Federal Charges Are Brought Alleging Tax and Labor Management Crimes; Durden and Iacobelli Plead Guilty.

NTC controller and JAB secretary Durden was the first person to be charged and plead guilty in this case. Significantly, the Information expressly names the NTC as a coconspirator. *See* Information, page 6, ¶2. Durden admitted in his Rule 11 Agreement that he “and his co-conspirators *used the UAW-Chrysler Training Center as a conduit to conceal* over a million dollars in prohibited payments and

things of value paid directly and indirectly to UAW Vice President General Holiefield and other UAW officials by persons acting in the interest of Fiat Chrysler Automobiles US LLC.” Durden Rule 11 Agreement, page 4, ¶3 (emphasis supplied). Durden also admitted that he conspired with a number of individuals and entities – including the NTC – to impede the IRS from assessing and collecting taxes by filing false tax returns on behalf of the NTC. *Id.*, page 7, ¶18.

The grand jury returned the First Superseding Indictment in July 2017. It charged Iacobelli with one count of conspiracy to violate the Labor Management Relations Act (the “Taft-Hartley Act”) and several tax counts. The grand jury did not charge Iacobelli with fraud or theft or embezzlement, and the NTC was not characterized as a victim in the charging document. To the contrary, the grand jury quite correctly determined that the NTC was deeply involved in the conspiracy as a conduit for the illegal payments. The grand jury also recognized the reason why the NTC was used as a conduit: “to conceal prohibited payments and things of value paid and delivered to UAW Vice President General Holiefield and other senior UAW officials.” (page 7, ¶4)

Iacobelli pled guilty pursuant to a Rule 11 plea agreement on January 22, 2018. In the factual basis in that agreement, Iacobelli again confirmed that he and his co-defendants used the NTC as a conduit for their crimes, admitting:

- Between in or before January 2009 and continuing through in or after June 2015, Alphons Iacobelli knowingly and voluntarily joined a conspiracy in which FCA and FCA executives and FCA employees agreed to pay and delivered, and willfully paid and delivered, money and things of value to officers and employees of the UAW. As part of that conspiracy, Alphons Iacobelli and other FCA executives and FCA employees acting in the interest of employer FCA ***used the bank accounts and credit card accounts of the NTC to benefit officers and employees of the UAW***, knowing that those individuals were not permitted to receive the money and other things of value. (§7)
- As part of the same conspiracy, FCA Vice President Alphons Iacobelli and other FCA executives and FCA employees ***transferred hundreds of thousands of dollars in prohibited payments from FCA, through the NTC***, into tax-exempt organizations controlled by UAW officials, including the Leave the Light On Foundation and the Making Our Children Smile Foundation, among others. (§9)
- As part of the same conspiracy, FCA Vice President Alphons Iacobelli and other FCA executives and FCA employees authorized the regular transfer of hundreds of thousands of dollars ***from the NTC to the UAW***, purportedly as reimbursement for the salaries of UAW employees assigned to the NTC. In fact, many of those UAW employees provided no services to the NTC. The salary reimbursements, along with a fraudulent 7% administrative fee, were authorized by FCA executives as a “political gift” to the Vice Presidents of the UAW Chrysler Department, and were ***paid for using funds provided by FCA***. (§10)
- In May 2011, FCA Vice President Alphons Iacobelli authorized the expenditure of more than \$2,100 to pay for first-class airline travel for Monica Morgan, the girlfriend of UAW Vice President General Holiefield. The first-class airfare was ***paid for by the NTC using funds provided by FCA***. (§15)
- In June 2014, FCA Vice President Alphons Iacobelli authorized the expenditure of \$262,219.71 to pay off the mortgage on the residence of UAW Vice President General Holiefield and Monica Morgan in Harrison

Township, Michigan. *The mortgage was paid off with a check issued by the NTC using funds provided by FCA.* (¶20)

- In August 2014, FCA Vice President Alphons Iacobelli authorized the expenditure of more than \$30,000 for a party for UAW official UAW-3 held at the FCA-UAW World Class Manufacturing Academy in Warren, Michigan. The expenditure included charges for “ultra-premium” liquor, more than \$7,000 worth of cigars, and more than \$3,000 worth of wine with custom labels in honor of UAW-3. *The expenses were paid for by the NTC using funds provided by FCA.* (¶21)

II. The Probation Department Determines that the IRS is the Only Party Entitled to Restitution from Iacobelli.

The PSR was prepared in March 2018. The Probation Department was not aware of any victim impact or restitution demand with respect to count one of the first superseding indictment. *See* PSR at ¶22. The government informed the Probation Department that the NTC is an unindicted coconspirator in this case and should not receive restitution. *See id.* That remains the government’s position today. The parties agreed that the IRS was entitled to \$835,523 in restitution on the tax charge. *See id.*

III. The NTC Files a Civil Complaint Against Iacobelli in Oakland County.

On June 8, 2018, the NTC filed a civil action in Oakland County Circuit Court against Iacobelli, his wife, Jerome Durden and Monica Morgan. *See* NTC Civil Complaint (attached as Exhibit A). The ten-count complaint and jury demand alleges that Iacobelli “stole over \$2,661,189 in NTC assets, which funds were

embezzled by Defendant Alphons Iacobelli and his Co-Defendants from the NTC and converted either to their use, or the use of others.” *Id.*, ¶35. The NTC’s civil complaint alleges civil fraud, breach of fiduciary duty, civil conspiracy, and unjust enrichment against Iacobelli, and also demands an accounting. The civil matter has been set for trial in August 2019.

IV. The NTC Raises Its Hand in the Federal Case on the Eve of Sentencing.

On August 6, 2018, the NTC submitted a letter to the Probation Department claiming that it was a victim entitled to restitution from Iacobelli because “he embezzled NTC funds.” The NTC did not inform the Probation Department of its pending civil action in the letter. The Probation Department did not amend the PSR in response to the August 6, 2018 letter.

On August 22, 2018, just five days before Iacobelli’s scheduled sentencing, the NTC filed the instant motion. The NTC did not inform the Court of its pending civil action in its filing.

On August 27, 2018, this Court sentenced Iacobelli to 66 months in prison and ordered him to pay \$835,523 in restitution to the IRS. This Court acknowledged the NTC’s motion at the sentencing hearing, but declined to consider it at that time. The United States submits this response in opposition to the NTC’s motion, consistent with the order entered on September 14, 2018.

ARGUMENT

I. The NTC is Not Entitled to Restitution Under the Statutes Alleged.

“‘Because federal courts have no inherent power to award restitution,’ restitution orders are proper ‘only when and to the extent authorized by statute.’” *United States v. Sexton*, 894 F.3d 787, 799 (6th Cir. 2018) (quoting *United States v. Evers*, 669 F.3d 645, 655-656 (6th Cir. 2012)). The NTC claims that it is entitled to restitution under the Crime Victims’ Rights Act (“CVRA”), 18 U.S.C. §3771 and the Mandatory Crime Victim Rights Act (“MVRA”), 18 U.S.C. §3663A.

A. There is No Independent Right to Restitution Under the CVRA.

The CVRA sets forth a series rights of crime victims. One of those rights is “to full and timely restitution *as provided in law*.” 18 U.S.C. §3771(a)(6) (emphasis supplied). In other words, the CVRA does not provide an independent right to restitution. *See United States v. Atlantic States Cast Iron Pipe Co.*, 612 F. Supp. 2d 453, 482 (D.N.J. 2009) (“The CVRA does not itself confer a right to restitution.”) *see also In re Petition of Korff*, No. 16-12984, 2016 WL 4537815, at *8 (E.D. Mich. Aug. 21, 2016) (citing *Atlantic States*).

B. The MVRA Does Not Apply.

The NTC's restitution claim thus hinges on whether it has a right to restitution under the MVRA. The MVRA applies only where (1) a defendant is convicted of a certain type of offense listed in the statute and (2) an alleged victim has suffered a pecuniary loss caused by defendant's conduct. *See* 18 U.S.C. §3663A(c)(1)(A)-(B).

1. The Crime of Conviction Is Not an Offense Against Property.

The MVRA sets forth four types of offenses for which restitution must be ordered. *See* 18 U.S.C. §3663A(c)(1)(A). The NTC relies on "an offense against property under [Title 18] ... including any offense committed by fraud or deceit." 18 U.S.C. §3663A(c)(1)(A)(ii). The NTC has not attempted to establish how Iacobelli's conspiracy to pay bribes under the Taft-Hartley Act amounts to an offense against property. In *United States v. Adorno*, 950 F. Supp. 2d 426 (E.D.N.Y. 2013), a city worker was charged with bribery concerning a program receiving federal funds. The city sought restitution of a quarter of his salary under an honest services theory. The Probation Department and Adorno argued that the MVRA was inapplicable because the bribery charged was not an offense against property, nor one committed by fraud and deceit. As the Probation Department recognized, "while the extent to which Adorno committed honest services fraud is

potentially relevant conduct under the United States Sentencing Guidelines, this is not the offense to which Adorno has pled, and it thus appears that the government and the City may be ‘seeking restitution for losses caused by an unprosecuted offense rather than the offense of conviction, something [they] may not do.’” *Id.* at 428 (citing *United States v. Archer*, 671 F.3d 149, 170 (2d Cir. 2011)). The district court agreed, and denied the city’s motion. *See Adorno*, 950 F. Supp. 2d at 430. (“On this record, to simply import a theory of honest services fraud into a charge of bribery—especially where a charge of honest services fraud was apparently available—eviscerates the doctrinal requirement that restitution is applicable only with respect to the offense of conviction.”)

2. The NTC Has Not Identified a Pecuniary Loss.

As discussed above, FCA absorbed any potential loss in this case when FCA reimbursed the NTC via the NTC’s subsequent draw requests. In the absence of pecuniary loss, restitution is not appropriate. *See* 18 U.S.C. §3663A(c)(1)(B).

II. The NTC is Not a “Crime Victim” under the CVRA.

Nor should the NTC be recognized as a crime victim under the CVRA. “A ‘crime victim’ is defined under the CVRA as a person ‘directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.’” *In re McNulty*, 597 F.3d 344, 349 (6th Cir. 2010) (quoting 18 U.S.C.

§3771(e)). The CVRA explicitly provides that “[a] person accused of the crime may not obtain any form of relief under this chapter.” 18 U.S.C. §3771(d)(1).

In making the determination of whether a movant is a victim under the CVRA, the court “must (1) look to the offense of conviction, based solely on facts reflected in the jury verdict or admitted by the defendant; and then (2) determine, based on those facts, whether any person or persons were ‘directly and proximately harmed as a result of the commission of that Federal offense.’” *McNulty*, 597 F.3d at 351. “[T]hat the harm must be ‘direct’ requires that the harm to the victim be closely related to the conduct inherent to the offense, rather than merely tangentially linked.” *Id.* at 352.

This Court should decline the NTC’s invitation to reshape the case narrative to suit the NTC’s case strategy. The First Superseding Indictment and Iacobelli Rule 11 plea agreement demonstrate how the NTC served as a means for the corrupt payments to be made.

A. The Offense of Conviction is Corrupting the Labor Management Process.

Here, the offense of conviction is conspiracy to violate the Taft-Hartley Act, 29 U.S.C. §186 (a)(2), (b)(1), (d)(1); not fraud, embezzlement or theft. Section 186 is titled “Restrictions on financial transactions.” Section 186(a) proscribes bribery and conflict-of-interest payments of money and other prohibited things of value to

representatives of employees, labor union officials, and labor organizations by employers, and persons acting in the interest of employers. Section 186(b)(1) prohibits the request or acceptance of payments described in the statute by any person. Section 186(d)(1) sets forth the penalties for a violation.

The NTC does not claim to be a victim of corruption of the labor management process. Instead, it argues that its former co-chairman, Iacobelli, “stole” from it. Such an allegation has nothing to do with union corruption, and is not closely related to conduct inherent to the offense. Count One of the First Superseding Indictment has a narrow focus: a multi-year Taft-Hartley conspiracy to buy labor peace. The objects of this conspiracy were:

- that one or more persons acting in the interest of employer FCA would willfully pay and deliver—and agree to pay and deliver—money and things of value to officers and employees of the UAW, the labor organization representing its employees, using the NTC with the intent to benefit persons who they knew were not permitted to receive the money and things of value (page 6, ¶2(a))
- that officers and employees of the UAW would willfully request, receive, and accept—and agree to receive and accept—money and things of value from employer FCA and one or more persons acting in the interest of FCA, using the NTC with the intent to benefit themselves and other persons who they knew were not permitted to receive the money and things of value (page 7, ¶2(b))

The NTC’s reliance on *United States v. Jones*, 641 F.3d 706, 714 (6th Cir. 2014) to try to expand the scope of the Taft-Hartley conspiracy to include potential

theft actually demonstrates how a union corruption case like ours is so different from a garden variety fraud case. *Jones* was a mail and health care fraud case where, unlike here, it was undisputed that the MVRA applied. The issue was whether Jones should be required to pay restitution to Medicare and Medicaid under the MVRA for acts for which he was acquitted. 641 F.3d at 713. The Sixth Circuit noted that “*in the context of mail fraud convictions*, we have read this statutory definition of ‘victim’ to allow for restitution for the loss attributable to all the victims of a defendant’s scheme to defraud, even when the defendant was not indicted or convicted of fraud with respect to each victim.” *Id.* at 714 (emphasis supplied). The Sixth Circuit was careful to explain that: “However, this precedent applies *only when the loss is attributable to the precise scheme that was an element of the defendant’s convicted offense.*” *Id.* (emphasis supplied). Because Jones was convicted by jury, the Sixth Circuit went on to examine the indictment, and determined that because the grand jury defined his scheme as “a general plan to defraud Medicare and Medicaid by committing many distinct acts,” the scheme included acts for which he was acquitted. *Id.* In contrast, the Taft-Hartley indictment focuses exclusively on the provision of illegal payments to union officials. For this case to parallel *Jones*, the NTC would have to claim that the indictment is sufficiently broad to cover other, additional, illegal payments. What

the NTC seeks to do, however, is impermissibly import a fraud allegation into the case.

The NTC's reliance on *United States v. Hatfield*, No. 06-CR-0550, 2015 U.S. Dist. LEXIS 190029, 2015 WL 13385926 (E.D.N.Y. Mar. 27, 2015) is likewise misplaced. *Hatfield* is another fraud case, where the government charged the defendants with securities fraud, mail fraud, wire fraud, insider trading, and conspiracy. *See* 2015 U.S. Dist. LEXIS 190029 at *4, *6. In stark contrast to our case, the defendants' alleged embezzlement from the company expressly formed the basis for federal charges. The company was not considered a coconspirator; rather the government viewed the company as a victim and sought restitution on its behalf. *See id.* at *13.

B. The Facts Admitted by the Defendant Establish that the NTC was an Instrument of the Conspiracy.

Iacobelli's admissions in his Rule 11 agreement and his plea colloquy establish first, that the singular scope of the conspiracy was to make illegal Taft-Hartley payments and second, that the NTC was an instrument in the conspiracy as the conduit for these illegal payments. As succinctly set forth in the Rule 11 Agreement:

Between in or before January 2009 and continuing through in or after June 2015, Alphons Iacobelli knowingly and voluntarily joined a conspiracy in which FCA and FCA executives and FCA employees

agreed to pay and delivered, and willfully paid and delivered, money and things of value to officers and employees of the UAW. As part of that conspiracy, Alphons Iacobelli and other FCA executives and FCA employees acting in the interest of employer FCA used the bank accounts and credit card accounts of the NTC to benefit officers and employees of the UAW, knowing that those individuals were not permitted to receive the money and other things of value. (§7)

FCA and its executives used the NTC and its accounts to facilitate the conspiracy in order to conceal the payments to the UAW and avoid detection. As discussed above, the unaudited NTC was under the exclusive control of senior executives from both FCA and the UAW.

The NTC was not “directly and proximately harmed as a result of the commission of that Federal offense” – rather, the NTC was a key part of it. The fact that FCA reimbursed the NTC for the illegal payments only underscores the absence of harm.

III. The Equities Counsel Against Restitution for the NTC.

The NTC is an unindicted coconspirator and an instrument of the crime of conviction. Restitution is not appropriate under these circumstances.

In *United States v. Reifler*, the Second Circuit held that it would be “fundamental” error to enter “any order ... that has the effect of treating coconspirators as ‘victims,’ and thereby requires ‘restitutionary’ payments to the perpetrators of the offense of conviction.” *United States v. Reifler*, 446 F.3d 65, 127

(2d Cir. 2006). Granting restitution to coconspirators “so adversely reflect[s] on the public reputation of the judicial proceedings” that the *Reifler* court corrected the error sua sponte. The Ninth Circuit agreed in *United States v. Lazarenko*, 624 F.3d 1247, 1252 (9th Cir. 2010).

The NTC is also unworthy of restitution because it an instrument of the crime. *See In re Bankr. Estate of AGS, Inc.*, 565 F. App’x 172, 174–75 (4th Cir. 2014) (denying restitution because the government alleged that the defendant used AGS as an instrument in his scheme to illegally obtain Medicare and Medicaid funds, and “AGS was one of the means through which the defendant perpetrated the fraud upon them”).

Going a step further, the Seventh Circuit denied restitution to Bank of America in connection with a fraud conviction of its borrower-clients based on the bank’s culpable conduct that fell short of coconspirator status. *See United States v. Litos*, 847 F.3d 906, 907–910 (7th Cir. 2017) (“Bank of America, though not a coconspirator of the defendants, does not have clean hands. It ignored clear signs that the loans that it was financing at the behest of the defendants were phony. ... Restitution for a reckless bank? A dubious remedy indeed.”)

Courts have also rightly been skeptical of entities who, like the NTC, have sought to transform themselves into victims. As the court explained in *United*

States v. Block, No. 16-CR-595 (JPO), 2018 WL 722854, at *5 (S.D.N.Y. Feb. 6, 2018), “the question is not whether the company transformed itself into a victim, but whether it was genuinely a victim—as opposed to a coconspirator—at the time of the crimes.” The court noted that while installing better controls after the case began was a positive step, “an even more important incentive is to prevent the circumstances that give rise to fraud and questionable accounting in the first place. That incentive is not advanced by allowing a company to play the victim card after the fact.” *Id.* at *3.

IV. This Issue Belongs in Oakland County.

The Sixth Circuit has made it clear that “the CVRA was not enacted to short circuit civil litigation to those with valid civil remedies available.” *McNulty*, 597 F.3d at 352 n.8. Instead of grafting a fraud case onto a union corruption case, the better course is to let the NTC have its day in court against Iacobelli in the civil proceeding that it initiated for that express purpose.

It is also worth noting that the NTC seeks restitution under the MVRA. In creating the MVRA, Congress sought to ensure that victims receive the restitution to which they are entitled, while also “guaranteeing that the sentencing phase of criminal trials do not become fora for the determination of facts and issues better suited to civil proceedings.” S. REP. 104-179, 18, 1996 U.S.C.C.A.N. 924, 931.

Congress specifically sought to avoid having “the restitution phase of the sentencing process . . . devolve into a full-scale evidentiary hearing.” *Id.* Thus, the MVRA does not apply if a court finds that “determining complex issues of fact related to the cause or amount of the victim’s losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.” 18 U.S.C. §3663(A)(c)(3)(B). Notably, in determining whether the complexity of a restitution determination is outweighed by the need to provide restitution, courts can consider “the availability of other relief in determining whether any restitution award would be appropriate[.]” *United States v. Gallant*, 537 F.3d 1202, 1253 (10th Cir. 2008).

Determination of the cause of any alleged NTC losses would unduly complicate the sentencing process. The NTC claims to be a victim, the government claims it is an unindicted coconspirator, and this investigation and prosecution is complex and ongoing. The government should not be required to preview any aspect of its evolving case in a mini-trial tangentially connected to another defendant’s sentencing, in order to prevent an unindicted coconspirator from getting out in front of a potential charge and gaining victim status. Under these circumstances, this Court can exercise its statutory discretion and decline to decide this issue, and send the NTC back to Oakland County instead.

CONCLUSION

Although the NTC's stated purpose was to provide for the training, education and retraining of workers, in reality, it served as an essential instrument for FCA and its executives to flout the Taft-Hartley Act and illegally pass millions to UAW officials and the union itself. It is not a victim, it is not entitled to restitution, and its claims belong in the state court civil proceeding. The United States respectfully requests that the motion be denied.

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Dated: October 1, 2018

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2018, I caused the foregoing document to be electronically filed with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

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